

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

www.skadden.com

DIRECT DIAL
(202) 371-7230
DIRECT FAX
(202) 661-8270
EMAIL ADDRESS
ABUSH@SKADDEN.COM

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June 7, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

RE: Ex Parte Notification: WC Docket No. 09-197

Dear Ms. Dortch:

On behalf of Virgin Mobile USA ("Virgin Mobile" or the "Company"), a wholly owned subsidiary of Sprint Nextel Corporation ("Sprint"), the Company takes this opportunity to urge the Commission to expeditiously approve its pending petitions for limited eligible telecommunications carrier ("ETC") designation in the states of Alabama, Connecticut, Delaware, New Hampshire and Washington D.C. for purposes of participating in the universal service fund's Lifeline program. Virgin Mobile also respectfully requests that the Commission swiftly act on its request to modify its plan to comply with the conditions imposed in the Commission's prior grant of ETC designation to the Company.

Rapid approval of the Company's outstanding ETC designation requests would enable it to deploy much needed Lifeline services to eligible customers in Alabama, Connecticut, Delaware, New Hampshire and Washington D.C. during a period of continued economic dislocation, ensuring that they are able to receive telecommunications services on a consistent and uninterrupted basis. Grant of the Company's request to amend its compliance plan also would broaden the availability of Lifeline services to lower-income customers by increasing Lifeline enrollment opportunities and reducing the administrative costs of providing such services.

I. ETC PETITIONS

A. Virgin Mobile Satisfies the Section 214(e)(1) ETC Designation Requirements

As Virgin Mobile demonstrated in its petitions, the Company satisfies all of the necessary requirements for ETC designation under section 214(e)(1) of the Communications Act of 1934, as amended (“Communications Act”). Indeed, Virgin Mobile provides all of the services and functionalities supported by the universal service program throughout its service territory in each of the requested states. These services include, but are not limited to, voice grade access to the public switched telephone network and access to emergency services. Virgin Mobile will also advertise the availability and rates for its Lifeline services as required by the Commission’s regulations.

B. Virgin Mobile Is a Facilities-Based Carrier for Purposes of Section 214(e)(1)

Virgin Mobile’s ETC designation requests also demonstrated that the Company is a common carrier that currently provides the supported services over an existing network infrastructure in each of the requested states. As noted in its petitions, Virgin Mobile was acquired by Sprint in November 2009 and is now a wholly owned subsidiary of Sprint. As such, Virgin Mobile has beneficial use of Sprint’s wireless facilities and is appropriately classified as a facilities-based carrier for purposes of section 214(e)(1) of the Communications Act.¹ While Virgin Mobile does not hold absolute, direct legal title to the communications facilities necessary to provide its services, the Commission has not imposed such a requirement for purposes of section 214(e)(1). The Commission has concluded that the term “own facilities” in section 214(e)(1) refers to property which a carrier “considers its own” and over which it “does not hold absolute title.”² The Commission has further explained that the concept of ownership under section 214(e)(1) is flexible and

¹ Virgin Mobile’s facilities-based status has been confirmed by the public utility commissions of the states of Florida, Maryland, Michigan and Texas, each of which has determined that Virgin Mobile operates as a facilities-based provider and will provide the supported services over its own facilities pursuant to section 214(e)(1)(A) of the Communications Act.

² *In re Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 159 (1997).

includes, in addition to property to which a carrier holds direct legal title, “property that a carrier considers its own,” and that ownership extends to “others enjoying the beneficial use of property.”³ The Commission added that “our interpretation of the term ‘own facilities’ is consistent with the goals of universal service and that any contrary interpretation would frustrate the goals of the [Communications] Act and lead to absurd results.”⁴

While certain parties have asserted that Virgin Mobile still operates as a reseller of wireless services, such assertions are devoid of any factual or legal support.⁵ The Commission has defined “resellers” as entities that “purchase airtime from facilities-based providers and resell service to the public for profit.”⁶ Thus, to be considered a “reseller” under Commission precedent, Virgin Mobile would have to purchase wholesale network capacity from its affiliates and resell it to its own customers. Since its acquisition by Sprint, Virgin Mobile no longer purchases network capacity from any entity and makes no payments for the use of any network or transmission services.⁷ Prior to Virgin Mobile becoming a wholly owned subsidiary of Sprint in November 2009, Sprint properly treated Virgin Mobile’s revenue as resale or wholesale revenue in its filings with the Universal Service Administrative Company (“USAC”) and the Securities and Exchange Commission (“SEC”). In light of the acquisition of Virgin Mobile, however, Sprint currently treats all revenue generated by customers of Virgin Mobile-branded services as

³ *Id.* ¶ 158. The Commission also noted that the statutory language “its own facilities” was not the same as facilities “owned by” the carrier and that this was a salient distinction. *See id.* at ¶ 159.

⁴ *Id.* ¶ 161.

⁵ *See* Comments of TracFone Wireless, Inc. at p.3-6; Comments of Advocates for Universal Access, LLC at p.3-6.

⁶ *In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Thirteenth Report, 24 FCC Rcd 6185, ¶ 17 (2009).

⁷ A hallmark of the reseller relationship is the reseller’s ultimate responsibility for payment to the underlying carrier of all charges associated with the services provided to its own customers. That is clearly not the situation here, where Virgin Mobile does not purchase service from Sprint and consequently is not “on the hook” for any commitments. *See, e.g., In re MCI Telecommunications Corp. v. AT&T*, 7 FCC Rcd 5096 (1992).

revenue generated from its Wireless segment for purposes of its USAC and SEC filings—just as it does for any other Sprint operating subsidiary.

C. The ETC Designation Conditions Applicable to Wireless Resellers Do Not Apply to Virgin Mobile's Pending Requests

Because Virgin Mobile is now a facilities-based carrier, the ETC designation conditions imposed only on wireless resellers, including a requirement that the reseller obtain certifications regarding its ability to provide customers with 911 and enhanced 911 ("E911"), should not apply to the Company's pending requests. As a facilities-based carrier and wholly owned subsidiary of Sprint, there is no need for the Commission to impose the 911/E911 certification requirement because Virgin Mobile's Lifeline customers enjoy the same 911 and E911 service as any other Sprint wireless customer using Sprint's existing 911 and E911 facilities and public safety answering point ("PSAP") relationships. Indeed, all 911 emergency calls made by customers of Virgin Mobile-branded services are handled in the same fashion as calls made by any other Sprint customer. When a Virgin Mobile customer calls 911, the call is received by Sprint Corporate Security, which maintains responsibility for routing it to the appropriate PSAP, just as with any other 911 call made by a Sprint customer. If a PSAP were required to directly contact the Company because of a disconnection, the PSAP call would be handled by Sprint Corporate Security, which has access to all Virgin Mobile customer information—just as it does for all other Sprint operating subsidiaries. As a facilities-based carrier and wholly owned subsidiary of Sprint, Virgin Mobile is able to provide its customers with robust emergency services, mitigating any need for the Commission to impose the 911/E911 certifications on its grant of ETC designation to the Company.

II. REQUEST TO MODIFY COMPLIANCE PLAN

Virgin Mobile also respectfully requests that the Commission expeditiously approve its request to amend its plan to comply with the conditions imposed on the Company in the recent grant of limited ETC designation for the states of New York, North Carolina, Tennessee and Virginia.⁸ Specifically, the Company seeks the authority to supplement the methods by which it enrolls customers and certifies their initial eligibility for receipt of Lifeline services. Under the first additional method of

⁸ See *In re Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, Order, 24 FCC Rcd 3381 (2009) ("ETC Designation Order").

enrollment, consumers will access the Lifeline application for their state through a secure website and complete the application “online.” This approach emulates the activities of other Lifeline providers, who permit eligible customers to submit applications over the Internet.⁹ The second enrollment procedure would permit applicants for Lifeline service to request or complete an enrollment form by contacting a toll-free telephone number established by the Company. This method of enrollment is consistent with the FCC’s regulations governing use of a voice response unit to verify an order for telecommunications services.¹⁰

These enrollment proposals fully comply with the requirements set forth in the *ETC Designation Order* regarding certification of a customer’s eligibility for Lifeline services. Most importantly, both approaches implement the Commission’s requirement that customers certify their eligibility under penalty of perjury, which the Commission has determined “serves as an effective disincentive to abuse the system”¹¹ The enrollment methods also further the Commission’s policies for broadening the availability of Lifeline services. Each is consistent with the recommendations of the Federal-State Joint Board on Universal Service, which has sought to simplify the enrollment and certification procedures to “alleviate[] the burden on consumers. . . ensuring that consumers receive telephone service as soon as possible.”¹² Finally, both methods are consistent with the recommendations contained in the National Broadband Plan, which set forth several proposals to streamline the Lifeline customer enrollment process.¹³ Indeed, requiring Lifeline customers to sign and return a physical document imposes a level of complexity that discriminates against lower-income customers, who must complete additional steps to receive wireless services, that more affluent customers, who can obtain service online or over the phone, need not satisfy—while not in any way advancing the Commission’s goal of reducing fraud.

⁹ See https://www.safelinkwireless.com/EnrollmentPublic/state_benefits.aspx.

¹⁰ See 47 C.F.R. § 64.1120(c)(2).

¹¹ *In re Lifeline and Link-Up*, 19 FCC Rcd 8302, ¶ 27 (2004).

¹² *In re Federal-State Joint Board on Universal Service*, 18 FCC Rcd 6589, ¶ 33 (2003).

¹³ See *Connecting America, The National Broadband Plan*, Recommendation 9.1 at p.172-173.

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III. CONCLUSION

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed electronically with your office. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Antoinette Cook Bush".

Antoinette Cook Bush

John M. Beahn

Skadden, Arps, Slate, Meagher & Flom LLP

1440 New York Avenue, N.W.

Washington D.C. 20015

Tel: 202-371-7230

Counsel to Virgin Mobile USA, L.P.